IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajuddin. Versus Smt. Shakila Bano & Anr.

S.B. Criminal Misc. Petition No. 911/2006
against the order dated 23-6-2005 passed
by the Additional Sessions Judge (Fast Track)
No.1, Bhilwara, in Criminal Revision No.47/2006.
...

Date of Order: October 09, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Usman Ghani, for the petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 23-6-2006 passed by the Additional Sessions Judge (Fast Track) No.1, Bhilwara (for short, "the Revisional Court" hereinafter) in Criminal Revision No.47/2006, whereby the revision petition filed by the petitioner against the order dated 18-2-2006 passed by the Judicial Magistrate No.2, Bhilwara (for short, "the trial Court" hereinafter) was dismissed.

Both the courts below, relying on the decision of the

Hon'ble Supreme Court in Shammi Ara Vs. State of U.P., 2002 SCC (Cri.) 1814, concurrently held that there had been no valid divorce (Talaq).

It is contended by the learned counsel for the petitioner that a Talaqnama was sent by registered post, which was received undelivered but as in the written statement, this fact was disclosed, therefore, if not from the date of the registered letter, at least from the date when the non-petitioner No.1 received the written statement, she had acquired the knowledge of divorce.

The controversy involved in the instant case stands decided by the Hon'ble Supreme Court in Shamim Ara Vs. State of U.P. (supra), wherein the Hon'ble Supreme Court held that the Talaq to be effective has to be pronounced. The term "pronounced" means to proclaim to utter formally, to utter rhetorically, to declare, to utter, to articulate. A mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating Talaq on the date of delivery of the copy of the written statement to the wife.

In this view of the matter, both the Courts below found that the petitioner failed to establish the divorce (Talaq) and granted maintenance in favour of the non-petitioners, which cannot be said to be erroneous.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

mcs